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EXAMINER	
MOORE, IAN N	

ART UNIT	PAPER NUMBER
2616	

DATE MAILED: 06/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/823,808	BUFFAM, BRUCE	
	Examiner	Art Unit	
	Ian N. Moore	2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 June 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-15 and 17-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-15 and 17-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *6-9-06* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-15 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andersson (US006760335B1) in view of Bradley (US006366580B1).

Regarding Claims 1, 6, 11, and 17, Andersson discloses a digital communication switch (see FIG. ATM Node/system 34) comprising:

a bus (see FIG. 4, bus/connection 1 between elements within; see col. 1, line 36-46);

a processor coupled to the bus (see FIG. 4, ATM node/system 34 contains processor/CPU/controller; see col. 1, line 36-46);

a storage device coupled to the bus, the storage device to store instructions to be executed by the processor (see FIG. 4, ATM node/system contains a memory to store instruction to be executed by processor/CPU/controller; see col. 1, line 36-46); and

a buffer to store voice data cells (see FIG. 4, AAL2 node/system stores voice data cells for switching; see col. 1, line 60), wherein the processor is configured to monitor the available bandwidth of a multiplexed connection (see FIG. 8, step 52,54; determining/monitoring resources; see col. 4, line 25-42; see col. 5, line 55-64; col. 6, line 32-53; see col. 10, line 13-40), receive a voice call (see FIG. 6, setup request; see FIG. 8, a new AAL2 connection), route the call according to the available bandwidth (see FIG. 8, step 54 with NO; see col. 4, line 35-42;

col. 10, line 40-52; establishing a connection with available resources), and overflow the call onto a new/added multiplexed connection without sending the call onto the multiplexed connection when the available bandwidth of the multiplexed connection is insufficient to carry the call (see FIG. 8, step 54, 56; adding/set-up a new AAL2 connection associated with a **new** AAL2 mux pair when there is no resources for new connection, and the new connection is not sent or established over original AAL-2 mux since there is no enough resources on original AAL-2 mux; see col. 4, line 25-36,40-47; col. 5, line 55 to col. 6, line 2; see col. 10, line 52-62).

Andersson does not explicitly disclose a non-multiplexed connection. However, having a non-multiplexed connection/channel in ATM AAL2 is well known in the art and ATM standards. In particular, Bradley teaches a non-multiplexed connection (see col. 1, line 53-60; utilizing ATM Single Channel Adaptation (SCA) SVC instead of multiplexing multiple channel onto a single SVC). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a non-multiplexed connection or a signal channel, as taught by Bradley in the system of Andersson, so that it would avoid the necessity of having to de-multiplex and multiplex the packet; see Bradley col. 1, line 57-59.

Regarding Claims 2, 7, 12, and 18, Andersson discloses sending the call over the multiplexed connection when the available bandwidth of the multiplexed connection is sufficient to carry the call (see FIG. 8, step 54 with NO; see col. 4, line 35-42; col. 10, line 40-52; establishing a connection with available resources by utilizing adequate existing/unused AAL2 connection).

Regarding Claims 3, 8, and 13, Andersson discloses wherein overflowing the call comprises:

adding a single multiplexed connection over the link per call (see FIG. 8, step 54, 56; adding/set-up a new AAL2 connection associated with a new AAL2 mux pair when there is no resources for new connection; see col. 4, line 25-36,40-47; col. 5, line 55 to col. 6, line 2; see col. 10, line 52-62);

transmitting the call over the multiplexed connection (see FIG. 6; transmitting a connection over AAL2 connection; see col. 4, line 25-36,40-47; col. 5, line 55 to col. 6, line 2; see col. 10, line 52-62); and

tearing down the single multiplexed connection once the call is completed (see FIG. 9; dropping/removing/tear down a connection once the AAL2 call is released/completed; see col. 5, line 55 to col. 6, line 2; see col. 8, line 12-59; see col. 10, line 62 to col. 11, line 35).

Bradley teaches a non-multiplexed connection as set forth above in claims 1,6,11 and 17. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a non-multiplexed connection or a signal channel, as taught by Bradley in the system of Andersson, for the same motivation as stated above in claims 1,6,11 and 17.

Regarding Claims 4, 9, 14 and 19, Andersson discloses wherein the multiplexed connection is a multiplexed Q.AAL2 signaling channel (see col. 2, line 20-30; see col. 5, line 62-64; see col. 7, line 63; see col. 8, line 35-42; AAL2 mux connection/channel is Q.2630 channel which is also known as Q.AAL2 signaling channel in the art).

Regarding Claims 5, 10, 15 and 20, the combined system of Andersson and Bradley disclosed all limitation. Andersson discloses wherein the newly added multiplexed connection is multiplexed Q.AAL2 signaling channel (see col. 2, line 20-30; see col. 5, line 62-64; see col. 7,

line 63; see col. 8, line 35-42; AAL2 mux connection/channel is Q.2630 channel which is also known as Q.AAL2 signaling channel in the art). Bradley also discloses a non-multiplexed/a single channel in AAL2 (see col. 1, line 53-60). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Bradley's a non-multiplexed connection or a signal channel in Andersson's a newly added Q.AAL2 signaling channel, as taught by Bradley in the system of Andersson for the same motivation as stated above in claims 1,6,11 and 17.

Response to Arguments

3. Applicant's arguments with respect to claim1-15 and 17-20 have been considered but are moot in view of the new ground(s) of rejection.

Regarding claims 1-15 and 17-20, the applicant argued that, "... In contrast, each of claims 1,6,11 and 17 include the limitation of overflowing the call onto non-multiplex connection without sending the call onto the multiplexed connection when the multiplexing connection's bandwidth is insufficient to carry the call. Therefore, Andersson does not disclose or suggest the limitation stated in claims 1, 6, 11 and 17...Bradley explicitly against multiplexing multiple channels onto a signal SVC...Bradley also does not disclose overflowing the call onto a non-multiplexed connection without sending the call onto the multiplexed connection when the multiplexing connection's bandwidth is insufficient to carry the call. Therefore, Bradley does not discloses the limitation in claims 1,6, 11 and 17 ..." in page 10-12.

In response to applicant's argument, the examiner respectfully disagrees with the argument above. The combined system of Andersson and Bradley clearly discloses the argued claimed invention as set forth below.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Andersson discloses the processor is configured to monitor the available bandwidth of a multiplexed connection (**see FIG. 8, step 52,54; determining/monitoring resources; see col. 4, line 25-42; see col. 5, line 55-64; col. 6, line 32-53; see col. 10, line 13-40**), receive a voice call (**see FIG. 6, setup request; see FIG. 8, a new AAL2 connection**), route the call according to the available bandwidth (**see FIG. 8, step 54 with NO; see col. 4, line 35-42; col. 10, line 40-52; establishing a connection with available resources**), and overflow the call onto a new/added multiplexed connection without sending the call onto the multiplexed connection when the available bandwidth of the multiplexed connection is insufficient to carry the call (**see FIG. 8, step 54, 56; adding/set-up a new AAL2 connection associated with a new AAL2 mux pair when there is no resources for new connection, and thus new connection is not sent or established over original AAL-2 mux since there are no resources; see col. 4, line 25-36,40-47; col. 5, line 55 to col. 6, line 2; see col. 10, line 52-62**). Thus, it is clear that Andersson disclose "a multiplex overflow/new connection" when there are no resources.

Having a non-multiplexed connection/channel in ATM AAL2 is well known in the art and ATM standards. In particular, Bradley teaches a non-multiplexed connection (**see col. 1, line**

53-60; utilizing ATM Single Channel Adaptation (SCA) SVC instead of multiplexing multiple channel onto a single SVC). Thus, it is clear that Bradley discloses "a non-multiplex connection" instead of a multiplex connection in network.

Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a non-multiplexed connection or a signal channel, as taught by Bradley in the system of Andersson, so that it would avoid the necessity of having to de-multiplex and multiplex the packet; see Bradley col. 1, line 57-59. Thus, the combined system of Andersson and Bradley discloses the argued claimed invention,

Regarding claims 1-15 and 17-20, the applicant argued that, "... Andersson does not suggest a combination with Andersson, and Bradley does not suggest a combination with Andersson because Bradley explicitly teaches away from such a combination. It would be impermissible hindsight to combine Andersson with Bradley based on applicant's own disclosure..." in page 12, paragraph 3.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a non-multiplexed connection or a signal channel, as taught

by Bradley in the system of Andersson, so that it would avoid the necessity of having to de-multiplex and multiplex the packet; see Bradley col. 1, line 57-59.

In response to applicant's argument that Bradley explicitly teaches away, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case, applicant argued claimed recites, "*...monitor the available bandwidth of a multiplexed connection...overflow the call onto a non-multiplex connection*". Andersson discloses, "*monitor the available bandwidth of a multiplexed connection...*" by utilizing a multiplex connection for an overflow new connection. Bradley discloses "*the call onto a non-multiplex connection*" by utilizing non-multiplex connection or a signal channel for a connection/data in order to avoid muxing and demuxing. Thus, Andersson's overflow new multiplex connection can be modified with "teaching" of Bradley, **not bodily incorporation**, which utilizes a non-multiplex or a single connection. In view of the above, due to the fact that Bradley teaches what Andersson's lacks does not make or cause Bradley to teach away.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the

applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Regarding claims 1-15 and 17-20, the applicant argued that, "... even if Andersson and Bradley were combined, such a combination would lack overflowing the call onto a non-multiplex connection without sending the call onto the multiplexed connection when the multiplexing connection's bandwidth is insufficient to carry the call ..." in page 12, paragraph 4.

In response to applicant's argument, the examiner respectfully disagrees with the argument above. The combined system of Andersson and Bradley clearly discloses the argued claimed invention as set forth above.

Again as set forth above, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ian N. Moore whose telephone number is 571-272-3085. The examiner can normally be reached on 9:00 AM- 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doris To can be reached on 571-272-7629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

INM
6-19-06

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